

174-1551

25 April 1974

MEMORANDUM FOR: Mr. Carl E. Duckett  
Secretary  
CIA Management Committee

SUBJECT : A Policy Ambiguity

1. Somewhat by chance, I recently learned of an ambiguity in the regulations governing the compensation of retired personnel brought back to work on a contract basis. This is something I wanted to flag to your attention. It is a matter on which the Management Committee probably should focus, but I would prefer not to be the sponsor of any such Management Committee consideration.

2. The matter in question is this: Under operative regulations -- or, perhaps more accurately, practice as directed by presumed precedent -- retirees brought back on a contract basis have their total compensation limited to 90 percent of their pre-retirement salary. What they are actually paid is the difference between their retirement income and that 90 percent ceiling figure. The ambiguity lies in determining the time frame over which this 90 percent rule is supposed to apply, i.e., is it a per annum compensation ceiling or a ceiling to be imposed on a constructive hourly rate of pay. The overall intent of the practice here involved appears to be that of insuring that a retiree on contract does not receive more than 90 percent of his pre-retirement annual salary. The mechanism by which this intent is given concrete effect is to adjust the hourly rate of pay so that if the individual in question were to work full time for an entire year (calendar or fiscal), his total earnings would not exceed the 90 percent ceiling figure. The question has been raised, however, whether this is equitable in the case of a retiree whom the Agency, on its own initiative and for its interests, has asked to continue on post-retirement active duty under circumstances in which the period of duty is clearly envisaged by both sides as being

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for some relatively brief span of time, measured in weeks or months but in any event considerably less than a single year. In such a case (and I have one) the point is understandably made that since the 90 percent ceiling for annual salary is not going to be approached, an imposed curtailment on the hourly rate is not equitable. Instead (so this line of argument runs), the hourly rate should be the difference between retirement compensation and pre-retirement salary (computed on an hourly basis) with the understanding that no matter what happened, the contract in question (and, hence, compensation under it) would be terminated before the individual hit the 90 percent ceiling imposed (without challenge) on a full year's income. In the abstract, this is not an easy argument to dismiss out of hand, particularly in a case in which the initiative for performing the contractual services was entirely the Agency's (pressed with some insistence) and the level of responsibility in question is unarguably commensurate with the grade at which the individual in question retired.


STATINTL 3. When at my request this matter was looked into by [redacted] (the extremely able personnel officer in the AO/DCI's office), he found that the justification for the current practice of hourly rate adjustment was indeed obscure and seemed to be largely based on a general impression that [redacted] had once laid down such a dictum. Appended hereto is a note on the subject Don did for me which will give you some of the background.

STATINTL 4. I yield to no one in my liking and admiration for [redacted]. Even his rulings, however, ought to be re-examined from time to time, even if such re-examination produces a reconfirmation of them as sound. I do think there should be a current Agency policy -- expressed in official prose -- defining the ceiling on the contractual earnings of retirees and spelling out clearly how this definition is to affect the computation of pay rates in concrete cases. Unless we are both equitable and (even more important) consistent in this matter, we will unintentionally be unfair in our treatment of different individuals and generate unnecessary resentment. Also -- since this is a topic on which the emotions of the individuals directly affected tend to be very strong -- if we are not careful, we could inadvertently stimulate a legal challenge to our whole retirement policy which could be extremely

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awkward. Though on management considerations I strongly endorse our policy of mandatory retirement at age 60, I am skeptical about whether it would stand up under legal challenge in today's environment. I thus think it would behoove us all to minimize unintended provocations which could increase the risk of such a challenge's being made.

STATINTL

  
George A. Carver, Jr.  
Deputy for National Intelligence Officers

Attachment

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